IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1243

HOMER DETRICH, Director, San Diego County Department of Public Welfare,
Petitioner,

v.

SHELDON G.,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

DENNIS HOLZ
MICHAEL R. VALENTINE
CHARLES WOLFINGER
LEGAL AID SOCIETY OF SAN DIEGO, INC.
110 North Ditmar Street
Oceanside, California 92054
(714) 722-1336
Attorneys for Respondent

ARTS & CRAFTS PRESS, SAN DIEGO, CALIF.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1243

HOMER DETRICH, Director, San Diego County Department of Public Welfare,
Petitioner,

v.

SHELDON G.,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Homer Detrich, Director of the San Diego County Department of Public Welfare ("County"), has petitioned this Court for a writ of certiorari to review a decision of the California Court of Appeal. Respondent Sheldon D. Greene ("Sheldon") requests that it deny the petition.

JURISDICTION

The Court has no jurisdiction under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

The constitutional question raised in the Petition For Writ Of Certiorari ("Pet.") is strictly the County's creation. The Court

of Appeal simply construed the language of a state statutory provision to grant a natural father the right to seek custody of his child at a hearing brought by the County to terminate his parental rights.

STATUTORY PROVISIONS

The following state statutes form the basis of the Court of Appeal's decision: California Civil Code Sections 4600 and 7000-7017. [The text of these provisions appears in the Petition at Appendix C-2 to C-6.]

STATEMENT OF THE CASE

The opinion of the Court of Appeal adequately and correctly sets forth the background of this case. (74 Cal.App.3d 125, 127-28.) The County's statement of the case is inadequate for two reasons. First, it is so incomplete and slanted as to create a false impression of the facts. Second, its characterization of the decision as grounded in constitutional law (Pet. at 5) is transparently inaccurate.

ARGUMENT

The County contends 1) that the Court of Appeal's decision was made on federal constitutional grounds and 2) that the state court believed its ruling was compelled by *Stanley v. Illinois*, 405 U.S. 645 (1972). (Pet. at 6.)[1] An examination of the opinion

[1] Respondent's understanding of the County's contentions must be based in part upon extrapolation and conjecture. Nowhere in its Petition does the County make any specific citation to the opinion of the Court of Appeal; in fact, it refers to the opinion only twice (Pet. at 5, 6), and then only by conclusory characterizations of its import as a constitutional decision. This absence of any connection between the opinion and the County's rambling exposition of its view of federal constitutional law (Pet. at 8-10), clearly reveals that the Petition is a request for an advisory opinion. (*See, infra* at 4-6.)

shows that the decision was based only on state grounds. Even if a federal constitutional basis for the decision could somehow be found, the holding rests on an adequate and independent state ground.

I

THE COURT OF APPEAL'S DECISION RESTS SOLELY ON AN INTERPRETATION OF THE LANGUAGE OF STATE STATUTES.

The case arose in a proceeding brought by the County pursuant to California Civil Code Section 7017.[2] The issue confronting the Court of Appeal was whether an undisputed natural father, who was not a "presumed father" under Section 7004, could seek custody of his child in that proceeding. Its resolution was based on a line-by-line analysis of Section 7017 and other sections of the Uniform Parentage Act (Sections 7000-7018) ("Act").

The Court of Appeal first examined the presumptions of parentage created by Section 7004. (74 Cal.App.3d at 131-32.) This section presumes that certain men are the natural fathers of their children when factual proof of parentage is unavailable. Since the parties agreed that Sheldon is Tricia's natural father, the court noted that "natural parentage can be established without resort to any presumption." (*Id.* at 132.)

Once Sheldon's parental status was established, the court determined his right to seek custody in a Section 7017 proceeding. Its analysis centered on the text of Section 7017(d). (74 Cal. App.3d at 133-34.) The first sentence of Section 7017(d) requires that natural fathers and possible natural fathers receive notice of proceedings brought to terminate their parental rights.

[2] All statutory citations are to the California Civil Code.

The second sentence permits expeditious termination of their rights if none appears or if custody is not claimed. Sheldon, of course, both appeared and claimed custody.

The third and crucial sentence of Section 7017(d) reads:

> . . . If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine parentage and custodial rights in whatever order the court deems proper. . . .

The court held that this sentence was determinative of the issue (74 Cal.App.3d at 134): "[t]he matter of custody was a proper subject for the court to consider[8]. . .". (*Id.* at 137.) Footnote 8 flatly states: "[t]he clear language of Civil Code Section 7017, subdivision (d) requires the court to determine custodial rights in this proceeding when claimed."

Having resolved the only question before it, the Court of Appeal remanded the case with directions to conduct a custody hearing pursuant to Section 4600, citing state court decisions interpreting the general standards for determining custody under that provision. No constitutional authorities were mentioned in its remand order. (74 Cal.App.3d at 137.)

Nowhere in its opinion did the Court of Appeal engage in even the most rudimentary constitutional analysis of Section 7017. The reason is obvious. It resolved the issue of Sheldon's right to seek custody solely by construing the language of Section 7017(d), without ever reaching the constitutional question the County claims was involved.

II

THE COURT OF APPEAL'S DECISION RESTS ON AN ADEQUATE AND INDEPENDENT STATE GROUND.

The County apparently contends that references to *Stanley v.*

Illinois, 405 U.S. 645 (1972) in the Court of Appeal's opinion transform it into a constitutional adjudication of Sheldon's rights under the Fourteenth Amendment. The County is attempting to fabricate a constitutional decision where none exists. Whatever weight is given the constitutional discussion in the opinion, it is clear that the decision rests on an adequate and independent state ground.

". . . [W]here the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, [the Court's] . . . jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller,* 296 U.S. 207, 210 (1935). *Accord, Jankovich v. Indiana Toll Road Comm'n,* 379 U.S. 487, 491-92 (1965); *Klinger v. State of Missouri,* 13 Wall. 257, 263 (1872). The policy underlying this jurisdictional limitation is ". . . found in the partitioning of power between the state and federal judicial systems . . ." and in the constitutional prohibition against rendering advisory opinions. *Herb v. Pitcairn,* 324 U.S. 117, 125-26 (1945). The Court noted that it could review decisions of state courts in order ". . . to correct them to the extent they incorrectly adjudge federal rights. . . . [However,] if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." (324 U.S. at 126.) In determining whether a state court's decision rests on an adequate and independent state ground, the Court looks to the "organization and language" of the opinion. *Jankovich v. Indiana Toll Road Comm'n., supra,* 379 U.S. at 491.

The organization and language of the Court of Appeal's opinion shows that the constitutional authorities cited at pages

129 and 130 (74 Cal.App.3d) were discussed only as part of the background against which the Act was proposed. The court did not state that the Act incorporated no more than the constitutional standards established by these authorities. It merely noted that its statutory interpretation was not inconsistent with those standards. In accordance with the familiar canon of statutory construction that courts will look first to the language of the statute (*United States v. Bass,* 404 U.S. 336, 339 (1972)), the court interpreted the text of Section 7017. (*See, supra* at 3-4.) That interpretation resolved the issue. The court's inquiry went no further. Thus, the nonfederal ground is "adequate" to sustain the judgment.

It is equally clear that the Court of Appeal was not constrained by *Stanley v. Illinois* to rule as it did. Its discussion of that case merely prefaced its statutory interpretation. That statutory construction was not in any sense interwoven with constitutional analysis since the opinion contains none. The state court would never have stated that the "clear language" of the Act required a custody hearing (74 Cal.App.3d at 137 n.8), if it believed the decision was compelled by *Stanley*.[3] Hence, the judgment is also "independent" of any conceivable federal ground.

---

[3] In the *Stanley* context, the County cites to the Court's recent decision in *Quilloin v. Walcott,* ..... U.S. ....., 54 L.Ed.2d 511 (Jan. 10, 1978). (Pet. at 6, 9, 10.) *Quilloin* is irrelevant, as its numerous factual and legal differences from this case attest. The most important difference illuminates the misdirection of the County's arguments: the father in *Quilloin* never sought custody of his child, but only veto power over his adoption, as the Court was careful to point out. (54 L.Ed.2d at 512, 520.) Sheldon has, since the beginning of the Section 7017 proceeding, sought custody of his daughter.

CONCLUSION

Since there is no basis for the exercise of this Court's certiorari jurisdiction, the Petition should be denied.

Respectfully submitted,

DENNIS HOLZ
MICHAEL R. VALENTINE
CHARLES WOLFINGER
LEGAL AID SOCIETY OF SAN DIEGO, INC.
Attorneys for Respondent

MARCH, 1978